IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 431 of 2003
with
SPECIAL CIVIL APPLICATION No 587, 825, 1283, 1402, 1701,
& 1966, all of 2003

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SOHANLAL SURAJARAM VISNOI
Versus
STATE OF GUJARAT

Appearance:
M/S SUBHADRA G PATEL, SN QURESHI, BANNA DUTTA, HR PRAJAPATI, for Petitioners

MR SUDHANSHU PATEL, AGP for Respondent No. 1-3 IN SCAs 1402, 1966, and 1701 of 2003
MS MITA PANCHAL, AGP, for Respondent No.1-3 IN SCAs 587, 431, 1283 and 825 of 2003

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT

Date of decision: 06/06/2003

ORAL JUDGEMENT

#. In this group of seven petitions under Article 226 of the Constitution of India, challenging interalia the detention orders passed by the respective detaining authority in exercise of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the PASA Act") on various and divergent grounds, a common ground of challenge emerging in all the questioned detentions in this group is as to whether the impugned action of detention made on the basis of a solitary incident or offence, in the factual profile of each case, can be upheld by this Court, and whether the same would justify the subjective satisfaction of the detaining authority in reaching to the conclusion that the said solitary incident in each case was sufficient enough to detain the detenu with a view to prevent the detenu from acting in any manner prejudicial to the maintenance of "public order"?

#. Since upon the factual profile viewed in the light of legal settings, the questioned detention orders in this group of seven petitions have been passed on the subjective satisfaction allegedly made on the objective facts which are factually common, and since in all these cases, the detention orders are passed only on the basis of a solitary offence registered against the detenus, upon request, and upon consideration of the peculiar facts and circumstances of the case, these petitions are being disposed of by this common judgment.

#. The PASA Act is aimed at providing for preventive detention of bootleggers, dangerous persons, drug offenders, immoral traffic offenders and property grabbers from preventing their anti-social and dangerous activities prejudicial to the maintenance of public order. Section 2(b) of the PASA Act defines who is a "bootlegger" whereas Section 2(c) of the said Act provides statutory definition of a "dangerous person". The detaining authority is empowered under Section 3(2) of the PASA Act to pass detention order on reaching the subjective satisfaction that it is necessary, with respect to the detenu, to detain such person, with a view to preventing him from acting in any manner prejudicial

to the maintenance of public order. It is needless to reiterate that emphasis is laid on "public order" and not on "law and order", which can be curbed or controlled under the general law. Preventive detention has a purpose and object, namely, that any defined activity or action under the detention law is sought to be prevented from its reoccurrence. It is therefore clear that it is preventive and not punitive detention. The preventive detention has also historical perspective and with constitutional safeguards, the detaining authority, on reaching the subjective satisfaction upon evaluation of the objective facts, is empowered to pass detention order so as to prevent occurrence of any activity or action statutorily provided and defined under the preventive detention law.

#. Article 22(3) of the Constitution of India expressly provides that the safeguards contained in Article 22(1) and 22(2) of the Constitution are not to apply to preventive detention. Article 22(4) of the Constitution provides and opens with double negative, put in positive form, and in its real substance, means that a law which provides for preventive detention for a period longer than three months, shall contain all the provisions prescribed in clauses (4) and (5) of Article 22 of the Constitution. Article 22(5) of the Constitution prescribes that when any person under a preventive detention law is detained, the authority making the order shall, as soon as may be, communicate to such person, the grounds on which the order has been made, and shall afford him with the earliest opportunity of making a representation against the order. Article 22(5) of the Constitution is of general importance and operation in respect of every detention order made under any preventive detention law.

#. In this group of petitions, all the detenus, except one in Special Civil Application No.825 of 2003, are treated and described as "bootleggers" as defined under Section 2(b) of the PASA Act and only one offence is registered against each detenu under the provisions of the Bombay Prohibition Act, 1949, whereas in Special Civil Application No.825 of 2003, the detenu is treated as "dangerous person" as defined in Section 2(c) of the PASA Act, and in this case also, a solitary incident is made basis for passing the detention order against him.

#. The learned advocates appearing for the detenus and the learned Assistant Gove....T....

the respondents are heard and they have taken this Court through the entire documentary evidence emerging from the record in this group of seven petitions. This Court has also taken into consideration the relevant statutory setting and constitutional profile, apart form the factual matrix of each case, the substratum of which is highlighted and articulated hereinbelow in a tabular form:

SCA No.	Date of detn.order	Defined as	Details of solitary offence/incident
431/03	31.12.2002	Bootlegger	Palanpur prohibition police station I C.R. No.1627/02 for offences u/s.66B, 65AA, 83,98,99, 116(2) of the Bombay Prohibition Act dt. 19.12.2002 - No statements recored
587/03	7.12.2002	Bootlegger	Kapodra police station III C.R. No.763/02 for offences u/s.66(1)B, 65E, A, 81, 116B of the Bombay Prohibition Act dt. 13.10.2002 - 2 statements recored and relied upon
825/03	6.1.2003	Dangerous person	Mahudha Police Station I C.R. No.156/02 for offences u/s.147, 148, 149, 395, 435, 337 of the Indian Penal Code dt. 11.11.2002 - 3 statements recored and relied upon
1283/03	6.1.2003	Bootlegger	Dariapur Police Station Prohi. C.R.No.5001/2003 for offences u/s.66(1)B,65 (a)(e), 81, 116(1)B of the Bombay Prohibition Act dt. 3.1.2003 - 2 statements recored and relied upon
1402/03	22.12.2002	Bootlegger	Prohi.Pol.Stn.(East) C.R. No.3836/02

for offenc
65(A)(E), 81, 116(1)(B)
of the Bombay
Prohibition Act dt.
19.12.2002 - 2 statements
recored and relied upon

1701/03 6.1.2003 Bootlegger Dariapur Police Station
Prohi. C.R.No.5001/2003
for offences u/s.66(1)B,65
(a)(e), 81, 116(1)B of the
Bombay Prohibition Act dt.
3.1.2003 - 2 statements
recored and relied upon

1966/03 24.12.2001 Bootlegger Odhav Police Station
Prohi. C.R.No.5165/2001
for
offences u/s.66B,65
(a)(e), 81, 116 of the
Bombay Prohibition Act dt.
11.12.2001 - 2 statements
recored and relied upon

#. At the outset, it may be noted that the contention advanced on behalf of the petitioners that no preventive detention order can be recorded in a solitary incident or instance or offence cannot be accepted in toto. The detaining authority can pass the order of detention even on the basis of a solitary incident or instance, provided there is justifiable subjective satisfaction on objective material and consideration that such incident or offence is likely to create disturbance of "public order", and which needs to be controlled and curbed preventively. There must be convincing reasons and justifiable material that the impugned activity or action is likely to cause adverse and prejudicial impact on the maintenance of "public order". Emphasis is laid on "public order" and not "law and order" which belongs to the realm of general law. After having taken into account the statutory definitions of the persons branded as "bootlegger" or "dangerous person" under the PASA Act, and detailed factual matrix of each case, the solitary incident or instance in question in these petitions has not been shown or spelt out from the record as affecting the "public order" or likely to create public disturbance or prejudicial or adverse to the maintenance of "public

order", and therefore, the continued detention of the detenus in each case has not been shown to be justifiable, and in this context, in exercise of the powers under Article 226 of the Constitution of India, this Court is left with no alternative in this group of petitions, but to quash and set aside the orders in each matter, with the result that all the petitions are required to be allowed while quashing and setting aside the detention orders passed against detenus in this group. The view which this Court has taken in this group of petitions is also reinforced by the observations and directions contained in the latest decision of the Hon'ble Supreme Court in the case of Darpan Kumar Sharma alias Dharban Kumar Sharma v. State of Tamilnadu and others, reported in (2003)2 SCC 313.

#. In the result, all these petitions succeed, and the same are allowed. The impugned detention orders in all these petitions are hereby quashed and set aside. The detenus in the questioned detention orders in these petitions shall be set at liberty forthwith, if not required in any other case. Rule is made absolute in each petition. There shall be no order as to costs. Direct Service is permitted.

(J.N.Bhatt, Acting C.J.)

(sunil)